
Public Safety & Emergency Preparedness Committee

SSB 5545

Brief Description: Addressing police investigations of commercial sexual exploitation of children and human trafficking.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Delvin, Kohl-Welles, Hargrove, Stevens, Fraser, Swecker, Chase, McAuliffe, White, Eide, Roach, Shin and Regala).

Brief Summary of Substitute Bill

- Permits law enforcement to record a communication with one party's consent if there is probable cause to believe the communication involves Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, or Promoting Travel for Commercial Sexual Abuse of a Minor.
- Permits law enforcement to employ a minor in investigating certain sex offenses when the minor's aid is limited to telephone or electronic communication or when an investigation is authorized by the one-party consent laws.

Hearing Date: 3/15/11

Staff: Alexa Silver (786-7190).

Background:

One-Party Consent.

Under Washington's privacy laws, it is generally unlawful to record a private conversation without the consent of all parties to the communication. However, there are exceptions for recordings by law enforcement when one party consents to the recording.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Judicial Authorization: Law enforcement may record a communication with one-party consent if the officer obtains authorization from a judge and there is probable cause to believe that the non-consenting party has committed, is engaged in, or is about to commit a felony. An authorization under these circumstances is limited to seven days.

Drug Investigations: As part of a criminal investigation, law enforcement may record a communication with one-party consent if the officer obtains authorization from the chief law enforcement officer or designee, there is probable cause to believe the communication involves a drug offense, and the officer completes a written report. The report must include: the circumstances, the names of the authorizing and consenting parties, the names of the officers who may record the communication, the identity of the person who may have committed the offense, the details of the offense, and whether there has been an attempt to obtain judicial authorization. If the consenting party is a confidential informant, his or her name need not be divulged. An authorization under these circumstances is limited to 24 hours and may not be extended more than twice.

Within 15 days, the law enforcement agency must submit the report to a judge for review of the authorization, but not of the evidence. If the authorization was made without probable cause and without a reasonable suspicion that the communication would involve a drug offense, the law enforcement agency is liable for \$25,000 in exemplary damages. If the judge determines there was no probable cause, the judge must send a notice to the non-consenting party six months after the determination is made. Law enforcement may obtain six-month extensions of the notice if an active, ongoing criminal investigation would be jeopardized.

Law enforcement may also record a communication (other than a telephone conversation) concerning a drug offense with one-party consent if a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger. Such a recording may be made for the sole purpose of protecting the safety of the consenting party.

Offenses Related to Commercial Sexual Abuse of a Minor.

Law enforcement and prosecutors may not employ a minor to aid in an investigation of Communication with a Minor for Immoral Purposes or Commercial Sexual Abuse of a Minor.

A person is guilty of Commercial Sexual Abuse of a Minor if he or she pays or agrees to pay a fee to engage in sexual conduct with a minor or requests that a minor engage in sexual conduct for a fee. It is a class B felony with a seriousness level of VIII. A person is guilty of Promoting Commercial Sexual Abuse of a Minor if he or she knowingly advances Commercial Sexual Abuse of a Minor or profits from a minor engaged in sexual conduct. It is a class A felony with a seriousness level of XII. A person is guilty of Promoting Travel for Commercial Sexual Abuse of a Minor if he or she knowingly sells travel services that facilitate travel for engaging in Commercial Sexual Abuse of a Minor or Promoting Commercial Sexual Abuse of a Minor, if occurring in Washington. It is an unranked class C felony.

Summary of Bill:

One-Party Consent.

As part of a criminal investigation, law enforcement may record a communication with one-party consent if: (1) the officer obtains authorization from the chief law enforcement officer or designee; (2) there is probable cause to believe the communication involves Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, or Promoting Travel for Commercial Sexual Abuse of a Minor; and (3) the officer completes a written report for review by a judge.

Evidence obtained as a result of the recording need not be submitted to the judge. If the judge determines there was no probable cause, and the confidential informant was either a minor at the time of the recording or a victim of commercial child sexual abuse, no notice may be given to the non-consenting party.

Law enforcement may also record a communication (other than a telephone conversation) concerning Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, or Promoting Travel for Commercial Sexual Abuse where one party consents if a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger.

Offenses Related to Commercial Sexual Abuse of a Minor.

Law enforcement and prosecutors may employ a minor to aid in an investigation of Communication with a Minor for Immoral Purposes or Commercial Sexual Abuse of a Minor if the minor is the alleged victim and: (1) the aid is limited to telephone or electronic communications; or (2) the investigation is authorized by the one-party consent laws.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on August 1, 2011.